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provision that it could not be assigned without the consent of the lessor, taking it in his own name. Considerable expense in the shape of attorney's fees and costs of suit were required to put the plaintiff in the possession of its rights and an item was made of this sum together with other elements to make up the plaintiff's damage. *Held*, that if one is about to lose possession of premises by reason of the wrongful act of another, and is obliged to employ professional aid and incur other reasonable expense to retain possession to which, as between him and that other, he is entitled, then the necessary expense thus incurred is an element of the injury. *McGaw v. Acker, Merrill & Condit Co.*, (1909), — Md. —, 73 Atl. 731.

The taxing of attorney's fees and costs as an element of damages has rarely been permitted in this country. There was some attempt to borrow from the civil law the rule of allowing such damages but it did not gain favor. SUTHERLAND, DAMAGES; Ed. 3, §§13, 45, 46; SEDGWICK DAMAGES, Ed. 7, p. 487; *Day v. Woodworth et al.*, 13 How. 363. But an apparent exception to this rule is the case of taxing as damages attorney's fees and costs when the wrongful acts of defendant have involved the plaintiff in litigation with others or have placed him in such relations with others as to make it necessary to incur such expense to protect his rights. Such injury will be treated as the legal consequences of the original wrongful act, if it be "such as may fairly and reasonably be considered" as arising naturally and proximately from the breach, and if it be certain in nature and amount. *Hadley v. Baxendale*, 9 Exch. 341; *Philpot v. Taylor*, 75 Ill. 309; *Baxendale et al. v. London, C. & D. Ry. Co.*, L. R. 10 Ex. 35; *Rochester Lantern Co. v. Stiles etc. Co.*, 135 N. Y. 209, 31 N. E. 1018; *Scott v. Shepherd*, 2 Black., W., 892; *Vandemburgh v. Truax*, 4 Denio, 464.

EMINENT DOMAIN—TAKING OR DAMAGING PROPERTY—NOISE AND SMOKE FROM OPERATION OF RAILROAD.—Plaintiff erected a church a short distance from a single track line of railroad operated by defendant. Later the defendant increased the number of tracks to fourteen, having first obtained the required amount of land, and the permission, by ordinance, from the city. The plaintiff finding its religious services disturbed by the noise and smoke incident to the handling of trains, brings this action for damages under the constitutional provision of the state that "no property shall be taken or damaged for public use without compensation." *Held*, that plaintiff cannot recover.—*Twenty-Second Corporation of Church of Jesus Christ of Latter-Day Saints v. Oregon Short Line R. Co.* (1909), — Utah —, 103 Pac. 243.

That a railroad company is liable for physical injury to property, such as the disturbance of ingress and egress, obstruction of light and air, falling of cinders, removal of lateral support and jarring of buildings, is, it seems, fairly well settled; *Rigney v. City of Chicago*, 102 Ill. 64; *Adams v. Chicago, etc. R. Co.*, 39 Minn. 286, 12 Am. St. Rep. 644; *Lahr v. Met. El. Ry. Co.*, 104 N. Y. 268, 10 N. E. 528. Also where shops are built in the immediate vicinity of business, or residence property, or a church, many courts have held that their presence would give rise to an action for damages, on the ground that

such requisites of a railroad can and should be built where they cause least annoyance. *Louisville & Nashville Terminal Co. et al. v. Lellyett*, 114 Tenn. 401, 85 S. W. 889; *Baltimore & Potomac R. Co. v. Fifth Baptist Church*, 108 U. S. 317, 2 Sup. Ct. 719. But where the damage, as in the principal case, is alleged to have been done only by the noise of passing trains and those engaged in switching, and an occasional puff of smoke, the trend of opinions seems to be in accord with the principal case. *Smith v. St. Paul, M. & M. Ry. Co.*, 39 Wash. 355; *Aldrich v. West Side El. Ry. Co.*, 195 Ill. 463, 464; *Rigney v. City of Chicago*, 102 Ill. 70, 71; *Austin v. Augusta Terminal Ry. Co.*, 108 Ga. 671. In the last case the dissenting opinion, written by LEWIS, J., and concurred in by LUMPKIN, P. J., presents the opposite view in an able and interesting manner. On the whole we can hardly consider the question as entirely settled, both sides being supported by competent authority, with the weight probably in favor of the principal case.

EQUITY—ILLEGAL CONTRACT—DUTY OF COURT.—Plaintiff, a referee appointed by the court in a proceeding for the sale of lands of a deceased person's estate, made an agreement with defendant before the sale, whereby defendant should bid for the entire tract and plaintiff should purchase part of the lands from defendant. In this action for specific performance, the defense of illegality not being raised by defendant, *Held*, (EVANS, C. J., dissenting) that specific performance be granted. *Rasch v. Jensen* (1909), — Ia. —, 120 N. W. 662.

It would appear from this case that a court of Equity will not inquire into the illegality of a contract, unless its attention be specially called to it by the parties. The plaintiff's own claim disclosed a clear breach of trust to the landowners, and courts are generally rigidly insistent in not enforcing such contracts. 1 STORY, EQ. JUR., ed. 13, p. 330. POM. CONTRACTS, p. 364. The reason courts set aside or refuse to enforce illegal contracts seems to be one wholly of public policy and not from any regard for the interest of the parties. *Holman v. Johnson*, 1 Cowp. 341; *Valentine v. Stewart*, 15 Cal. 405; POM. CONTRACTS, p. 365; and in *Krcamer v. Earl*, 91 Cal. 112, 27 Pac. 735, the court says: "but in cases of this kind the court is bound to satisfy its own conscience, and cannot shut its eyes to the fact although it is not put in issue. It intervenes not for the sake of the party, but for the law. When the court discovers a fact which indicates that the contract is illegal and ought not to be enforced it will of its own motion instigate an inquiry in relation thereto." The power to declare a contract void as against public policy is used with extreme caution, however. *Equitable Loan & Security Co. v. Waring*, 117 Ga. 599, 62 L. R. A. 93; *Richmond v. Dubuque etc. Co.*, 26 Iowa, 191, 202, and the courts are equally insistent that those contracts which are lawful shall be duly enforced. *Stroemer v. Van Orsdel*, 74 Neb. 132, 103 N. W. 1053, 4 L. R. A. (N. S.) 212. But where, from the pleadings, any illegality appears, that it is the duty of the court to investigate, seems to be clearly settled.

EVIDENCE—PAROL EVIDENCE CONTRADICTING RECITAL AS TO INDORSER'S LIABILITY.—The defendant indorsed a note which recited, "for value received,